THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.12835 OF 2005

ORDER:

Petitioner is a Company incorporated under the provisions of the Companies Act, 1956. This writ petition is filed questioning the order dated 21.03.2005 in S.A.No.8 of 2004 passed by the Deputy Commissioner of Labour, Guntur, who is the second appellate authority under the provisions of the A.P. Shops and Establishments Act, 1988.

The facts, in brief, are as under:

Petitioner is a pharmaceuticals company, having its registered office at Mumbai. It is stated that petitioner-company was registered under the provisions of the A.P. Shops and Establishments Act, 1988, and carries on business in distribution and sale of pharmaceuticals products in different parts of India, including the State of Andhra Pradesh. It is not in dispute that respondent No.3 herein was appointed by the petitioner-company as a Medical Representative on 1st October, 1987, and initially, he was posted at Nellore. Subsequently, on 15.07.1998 he was transferred to Nalgonda, since sale operations of petitioner-company in Nellore District were closed down on the ground of continuous losses. However, even the existing sales in Nalgonda District had started going down. Petitioner alleges that it was only due to the campaign of destruction adopted by respondent No.3. In the circumstances, petitioner-company was constrained to issue termination orders dated 25.10.2000, terminating the services of respondent No.3. Aggrieved by the same, the 3rd respondent preferred appeal under Section 48 of the A.P. Shops and Establishments Act, 1988, before the Assistant Commissioner of Labour, Nellore (2nd respondent) herein. The said appeal being S.C.No.2 of 2003 was disposed of by the 2nd respondent by order dated 18.11.2003 directing the petitioner-company to pay to respondent No.3 two years back wages as compensation without reinstatement. Petitioner alleges that though a specific objection was raised before respondent No.2 that the appeal itself was not maintainable since respondent No.2

lacks territorial jurisdiction, the said contention was not considered, but the appeal was disposed of directing payment of compensation on the sole ground that respondent No.3 was terminated without conducting any enquiry. However, petitioner-company complied with the order of respondent No.2 dated 18.11.2003 and deposited the compensation awarded. In spite of the same, respondent No.3 preferred Second Appeal under Section 48(3) of the A.P. Shops and Establishments Act, 1988, before the 1st respondent-Deputy Commissioner of Labour, Guntur. Petitioner-company contested the said appeal, contending, *inter alia,* that even respondent No.1 had no territorial jurisdiction in view of the nature of employment of respondent No.3. It was also contended that since petitioner-company had absolutely no establishment of any nature in the State of Andhra Pradesh, the provisions of the A.P. Shops and Establishments Act, 1988, did not attract, and therefore, it was prayed to frame a preliminary issue as to the territorial jurisdiction. However, respondent No.1 without going into the said objection passed the impugned order dated 21.03.2005 directing petitioner-company to pay a sum of Rs.80,000/- *in lieu* of reinstatement, in addition to back wages calculated from the date of termination till the date of passing of the said order at the minimum rates of wages notified for salesman category in G.O.Ms.No.80, dated 2.12.2000, within 30 days. The said order passed by respondent No.1 dated 21.03.2005 is under challenge in this writ petition.

I have heard learned counsel for the petitioner and perused the material on record.

Learned counsel for the petitioner contends that both respondents 1 and 2 committed an error in directing payment of compensation and back wages to respondent No.3 merely on the ground that respondent No.3 was not given an opportunity before termination of his services. Learned counsel contends that in spite of objections raised by the petitioner-company that the provisions of the A.P. Shops and Establishments Act, 1988, had no application, and that the respondents 1 and 2 had no territorial jurisdiction to entertain the appeals, both the authorities failed to consider the same and did not record any finding on the said objections. Even on merits, the conclusion arrived at by respondents 1 and 2 that respondent No.3 was not afforded an opportunity before passing the order of termination was erroneous and the same was without application of mind to the evidence placed on record.

On the other hand, the learned counsel for the respondent No.3 contends that the conclusions of the respondents 1 and 2 are unassailable, since, admittedly, respondent No.3 was never afforded an opportunity to put forth his version before termination of his service. Learned counsel also submits that the contention that, respondents 1 and 2 had no territorial jurisdiction, is untenable and the same was rightly rejected by respondents 1 and 2.

On a perusal of the material on record, it is clear that the 3rd respondent was appointed as a Medical Representative. It is also not in dispute that his services were terminated by order dated 25.10.2000 without giving notice and without conducting domestic enquiry. The respondent No.3 had pleaded that the termination of his services was only as a counter blast to the proceedings initiated by him under the Minimum Wages Act vide M.W.No.54 of 2000 before the Assistant Commissioner of Labour, Nellore, claiming minimum wages, and that the order of termination, dated 25.10.2000 was passed by the petitioner-company only after receiving orders passed by the authorities under the Minimum Wages Act. Thus, it was contended that the order of termination was *mala fide* and illegal being in contravention of the provisions of Section 47 (2) of the A.P. Shops and Establishments Act, 1988.

On the other hand, the case of the petitioner-company was that respondent No.3, ever since the date of joining the services of the petitioner-company, was not discharging his duties to the satisfaction of the management and in spite of several opportunities given, he failed to improve his work. Hence, the petitioner-company was forced to terminate the services of respondent No.3 on the ground of unsatisfactory work. Since the termination was for reasonable cause, it cannot be held to be bad for want of enquiry and the management can justify termination even before the appellate authority by leading evidence. In support of the said contention the petitioner relied upon the decision of the Supreme Court in **United Planters Association of Southern India v. K.G. Sangameswaran**, and submitted that in such circumstances, on the basis of the evidence produced, the appellate authority can come to its own conclusion on the question whether the employee was guilty of the charges framed against him or not.

The petitioner-company had also contended before the appellate authority that the respondent No.3 being a Medical Representative is governed by the provisions of

sub-section (2) of Section 6 of the Sales Promotion Employees (Conditions of Services) Act, 1976, according to which, a dismissed, discharged or retrenched Medical Representative has to raise an industrial dispute under the provisions of the Industrial Disputes Act, 1947. Hence, the appeal under the A.P. Shops and Establishments Act, 1988, was not maintainable. It was also contended that since on the date of termination, respondent No.3 was working at Nalgonda, the appellate authority at Nellore had no territorial jurisdiction to entertain the appeal.

Both the petitioner-company and respondent No.3 (applicant/employee) produced voluminous evidence before respondent No.2, in support of their respective claims. Respondent No.2 though referred to the objection raised by the management as to the maintainability of the appeal, did not record any finding on the said aspect, but concluded that the documentary evidence produced by the management established that the services of the applicant were not satisfactory and trustworthy. Thus, it was held that there was a reasonable cause for termination. However, on humanitarian grounds, the management (writ petitioner) was directed to pay two years back wages as compensation without reinstatement. It was also clarified that the compensation should be calculated on the basic wage/pay last drawn by the applicant.

Though the management (writ petitioner) complied with the said order and paid compensation, respondent No.3 herein (employee) preferred Second Appeal before respondent No.2, contending that the conclusions of respondent No.2 were erroneous, and as a matter of fact, respondent No.2 ought to have ordered reinstatement and continuity of service along with back wages. Respondent No.1 – Deputy Commissioner of Labour, while distinguishing the decision of the Supreme Court in **Sangameswaran** case (1 supra), on facts, held that since in the case on hand, the management straight away terminated the services of the employee, without giving any opportunity to defend himself, that the management neither framed charges nor conducted any domestic enquiry into the allegations levelled against the employee and that since the management also failed to take into consideration the past record of the employee, termination was illegal and unjustified. Accordingly, the order of termination was set aside. However, taking into consideration that the relationship between the management and the employee is strained badly, and that apart, since there was a long gap of four years after termination, to meet the ends of justice, directed the management to pay a sum of

Rs.80,000/- towards compensation *in lieu* of reinstatement, in addition to back wages, calculated from the date of termination till the date of passing of the said order at the minimum rates of wages notified for salesman category in G.O.Ms.No.80, dated 2.12.2000.

Having regard to the material on record, it is clear that the services of respondent No.3 were terminated straightway without issuing notice. Admittedly, no charges were framed and no domestic enquiry was conducted into the allegations levelled against him.

Petitioner-management does not dispute the said fact, however, made an attempt to justify its action on the ground that the services of respondent No.3 were not satisfactory, which constitute a reasonable cause for termination. It is also contended that even where services were terminated for misconduct of the employee, it is open to the management to lead evidence including production of documents at any stage of the proceedings before the statutory authority to substantiate its allegations.

The learned counsel for the petitioner while contending that, the mere fact that no enquiry was conducted before terminating the services of respondent No.3 does not vitiate the impugned termination, submitted that having regard to the facts and circumstances of the case, the respondents 1 and 2 ought to have recorded a finding on merits on appreciation of the evidence produced, whether the termination was illegal.

It is true that in a catena of decisions, it has been held by the Supreme Court as well as this Court that there was no embargo on the powers of the Court/Tribunal to require parties to lead additional evidence including production of documents at any stage of the proceedings to establish charges. However, as clarified in the decision of **Karnataka SRTC v. Lakshmidevamma** the right of the management to lead evidence before the Labour Court or the Industrial Tribunal in justification of its decision under consideration by such Tribunal or Court is not a statutory right, but it is only a procedure laid down by the Courts to avoid delay and multiplicity of proceedings in appropriate cases in the disposal of disputes between the management and workman. Thus, it is clear that though the appellate authority has jurisdiction to take evidence at the appellate stage and come to its own conclusion

about the guilt of delinquent employee, the management cannot seek, as a matter of right, an opportunity to justify the termination in question.

At any rate, in the case on hand, though respondent No.2 held that the documentary evidence produced by the management established that the performance of the applicant-respondent No.3, was not satisfactory, the said finding was not supported by any reasons. Except recording the versions of both parties, the respondent No.2 did not appreciate the evidence on record. However, respondent No.1, who is the second appellate authority, taking into account the fact that allegations levelled against the employee were vague and not specific and neither charges were framed nor domestic enquiry was conducted, held that it was not a case where the management could be permitted to justify the order of termination by leading evidence at the appellate stage. Thus, it was concluded that the termination without any enquiry was illegal and unjustified. I do not find any justifiable reason to interfere with the said findings recorded by respondent No.1, which are in accordance with law.

The further contention raised by the learned counsel for the petitioner that the respondent No.3, who is a Medical Representative, is governed by the provisions of the Sales Promotion Employees (Conditions of Services) Act, 1976, and therefore, he cannot have recourse to the provisions of the A.P. Shops and Establishments Act, 1988, is concerned, it is to be noted that this Court having considered an identical question in **GM Sales, FDC Ltd., Bombay v. Deputy Commissioner of Labour, Guntur**, held that the A.P. Shops and Establishments Act, 1988, prevails over the Sales Promotion Employees (Conditions of Services) Act, 1976 in the State of Andhra Pradesh. In the said decision, this Court also held that the provisions of the A.P. Shops and Establishments Act, 1988, are not repugnant to the provisions the Sales Promotion Employees (Conditions of Services) Act, 1976.

Though the order of termination dated 25.10.2000 was purportedly issued on the ground of unsatisfactory performance, keeping in view several allegations made by the petitioner-management, in fact, it appears to be an order of termination as a measure of punishment. As held in **GM Sales, FDC Ltd., Bombay v. Deputy Commissioner of Labour, Guntur** (3 supra), since the Sales Promotion Employees (Conditions of Services) Act, 1976 does not contain any provision with regard to conduct of employees and imposition of punishment, it cannot be said that the

provisions of other Acts are excluded. Hence, the contention of the learned counsel for the petitioner that the 3rd respondent ought to have invoked the provisions of Sales Promotion Employees (Conditions of Services) Act, 1976, is without any substance.

Even with regard to the contention that respondents 1 and 2 have no territorial jurisdiction, it is to be noted that though the petitioner raised such an objection, it allowed the respondent No.2 to decide the appeal on merits and also implemented the Award by paying compensation as awarded by respondent No.2. Hence, it is not open to it to challenge the impugned orders on that ground.

For the aforesaid reasons, the order dated 21.03.2005 in S.A.No.8 of 2004 passed by respondent No.1 does not warrant any interference by this Court. The writ petition is accordingly, dismissed. No costs.

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(G. ROHINI, J.)

April 13, 2006.

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.12835 OF 2005

April 13, 2006.

Between:

M/s Empiai pharmaceuticals Pvt.

Ltd., represented by its Executive Director,

Mr. Pilar Padmanabha Bhatt, 102,

Bhagat Singh Road, Vile Parle (West),

Mumbai. .. Petitioner.

And

The State of Andhra Pradesh, represented by

the Deputy Commissioner of Labour, Guntur,

Guntur District and two others. .. Respondents.